

CITY OF GUSTAVUS, ALASKA

RESOLUTION 2010-25

**A RESOLUTION OF THE CITY COUNCIL OF GUSTAVUS, ALASKA
ADOPTING MINOR REVISIONS TO THE CITY OF GUSTAVUS
PETITION TO ANNEX CERTAIN FALLS CREEK AND ICY PASSAGE
TERRITORY TO THE CITY OF GUSTAVUS, AND AUTHORIZING
SUBMISSION OF THE REVISED PETITION TO THE ALASKA LOCAL
BOUNDARY COMMISSION**

WHEREAS, by Resolution 2008-23 adopted December 11, 2008, the Gustavus City Council authorized its Special Borough Committee to prepare a proposal to annex certain Falls Creek and Icy Passage territory in the form of a draft petition for submission to the Alaska Local Boundary Commission (LBC); and

WHEREAS, by Resolution 2009-17 adopted June 11, 2009, the Gustavus City Council authorized the Mayor to submit a petition for annexation of certain Falls Creek and Icy Passage territory to the LBC; and

WHEREAS, by letter dated September 15, 2009, the Alaska Department of Commerce and Community Economic Development (DCCED), as staff for the Local Boundary Commission, advised the City of certain technical deficiencies in that petition; and

WHEREAS, the City's Borough Committee subsequently revised the proposed petition to address the deficiencies that DCCED identified; and

WHEREAS, the City of Gustavus made the prospective petition, as revised, available to the public for public review in accordance with 3 AAC 110.425(c); and

WHEREAS, the City Council conducted a public hearing on May 27, 2010, and took public testimony regarding the prospective annexation in accordance with 3 AAC 110.425(d); and

WHEREAS, based upon its review of the Special Borough Committee's draft petition, and in consideration of public testimony taken during its May 27, 2010 public hearing regarding the proposed annexation, the City Council adopted Resolution 2010 -16, which authorized submission of that petition to the Alaska Local Boundary Commission; and

WHEREAS, by letter dated September 10, 2010, the Alaska Department of Commerce and Community Economic Development (DCCED), as staff for the Local Boundary Commission, reported that it had identified twenty-four deficiencies as a result of its technical review of the City's petition for annexation; and

WHEREAS certain of those identified deficiencies, specifically Items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20 and 21, portions

of Item 22, and Item 24 required minor revisions to the petition and some of its supporting exhibits; and

WHEREAS, the City's Special Borough Committee prepared the following revisions to the petition and its exhibits to address those deficiencies, listed below in the order identified in DCCED's Technical Review:

1. Amended Section 2 of the Petition for Annexation to include residence and email addresses for Petitioner's representative and alternate in accordance with 3 AAC 110.420(b)(2).
2. Amended Exhibit 4 to the Petition for Annexation to include the name of the Commissioner of the Alaska Department of Natural Resources.
3. Amended
 - a. Section 12 of the Petition for Annexation to include reference to the City's capital expenditures.
 - b. Exhibit 5 to the Petition for Annexation to include reference to the City's capital expenditures.
4. Amended Exhibit 5 to the Petition for Annexation to include a label identifying it as Exhibit 5.
5. Amended Exhibit 5 to the Petition for Annexation to include zeros for all blank items, because the amounts are zero or the City estimates the amounts to be zero.
6. Amended Section 18(E)(2) of the Petition for Annexation to clarify that "the proposed annexation territory proposed for annexation addresses the requirements of 3 AAC 110.130(b), because the territory proposed for annexation is contiguous to the City's present corporate boundaries, will not create any enclaves, and includes all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective level."
7. Amended Section 18(E)(3) of the Petition for Annexation to include mention that the proposed expanded boundaries of the City are on a scale suitable for city government.
8. Amended Section 18(E)(3) of the Petition for Annexation to correct the citation of a section of the Alaska Administrative Code from 3 AAC 110.130(c) to 3 AAC 110.130(c)(1).
9. Amended Section 18(E)(4) of the Petition for Annexation as follows:
 - a. Changed 3 AAC 110.130(d) to 3 AAC 110.130(c)(2).
 - b. Changed the city annexation standards reference from 3 AAC 110.090 – 3 AAC 110.130 to 3 AAC 110.090 – 110.135.

(DCCED Technical Review incorrectly referenced 3 AAC 110.090 – 110.150, which was addressed and resolved during the September 22, 2010, teleconference with Mr. Brent Williams, State of Alaska Department of Commerce Community and Economic Development.)

- c. Included reference to the requirement of 3 AAC 110.130(c)(2) that the proposed boundaries “are otherwise suitable for city government.” (Included under item 10 of the DCCED Technical Review.)
- 10. Amended Section 18(E)(5) of the Petition for Annexation to clarify that the proposed annexation meets the requirements of 3 AAC 110.130(d), which requires meeting the standards *and* procedures for annexation of an enlarged city to or detachment from an existing organized borough, or detachment of territory from a city, merger of cities, or consolidation of cities.
- 11. Amended Section 18(E)(5) of the Petition for Annexation to clarify that the proposed annexation does not overlap the boundaries of any other organized city or of any borough.
- 12. Amended Section 19 of the Petition for Annexation to document that, as required by 3 AAC 110.420(b)(20), the City Council authorized the filing of this petition under 3 AAC 110.410.
- 14. Amended Section 20 of the Petition for Annexation by deleting the signature lines for the City Council members.
- 15. Amended Exhibit 6 to the Petition for Annexation, pp. 7-8, to change 3 AAC 110.0909 to 3 AAC 110.090.
- 16. Amended Exhibit 6 to the Petition for Annexation, p 34, to clarify that the LBC may consider other character factors in addition to those listed in 3 AAC 110.100.
- 17. Amended Exhibit 6 to the Petition for Annexation, p 40, to clarify that the LBC may consider other resource factors in addition to those listed in 3 AAC 110.110.
- 18. Amended Exhibit 6 to the Petition for Annexation, p 51, to clarify that the LBC may consider other population factors in addition to those listed in 3 AAC 110.120.
- 19. Amended Exhibit 6 to the Petition for Annexation, p. 71 to clarify that 3 AAC 110.135(2) states that a minimum number of local government units is a factor that the LBC may consider.
- 20. Amended Exhibit 6 to the Petition for Annexation, p. 84, to include an analysis of Article X, Section 1, of the Constitution of the State of Alaska in the City’s analysis of the application of 3 AAC 110.140(7) to the City’s petition.

21. Amended Exhibit 6 to the Petition for Annexation, pp. 85-99, to include analysis of the Constitution of the State of Alaska, AS 29.05, and 3 AAC 110.005 - 3 AAC 110.042 to demonstrate that “annexation of the territory will enhance the extent to which the existing city meets the standards for incorporation of cities” and is in the best interest of the state.
22. Amended the “Summary of City of Gustavus, Alaska, Petition for Annexation by Legislative Review” to include, as required by 3 AAC 110.425, an abstract of the transition plan required under 3 AAC 110.900, which transition plan is, in essence, a continuation of ongoing City services, and which was explained in detail at the May 27, 2010 public hearing.
24. Amended Exhibit 1 and Exhibit 2 in accordance with DCCED suggestions giving more precise descriptions of, but not otherwise changing, the boundaries of the territory proposed for annexation and of the City should the annexation be approved.

WHEREAS, the above listed items are of a relatively minor, technical nature and do not change the nature, scope or impact of the proposed annexation; and

WHEREAS, Item 12, Item 13, portions of Item 22 identified in DCCED’s September 10, 2010, Technical Review were clerical oversights in assembling the petition documents for filing with the LBC, do not require revisions to the Petition for Annexation or its supporting Exhibits, and will be addressed as follows:

1. Item 12: A copy of this resolution will be attached as Exhibit 7 to the City’s Petition for Annexation when filed with the LBC.
2. Item 13: Exhibit 8 to the City’s Petition for Annexation, the Affidavit of Petitioner’s Representative, will be included with both the original “hard copy” and the electronic document copy of the Petition when filed with the LBC.
3. Item 22: When filed with the LBC, the Affidavit of Petitioner’s Representative will clarify that the City Council did not receive any materials from the public relative to the May 27, 2010, public hearing regarding the proposed annexation.
4. Item 22: When filed with the LBC, the City will produce and will submit a complete written transcript of the May 27, 2010, public hearing regarding the proposed annexation; and
5. Item 22: When filed with the LBC, the Affidavit of Petitioner’s Representative will attest to the fact that the “Summary of City of Gustavus, Alaska, Petition for Annexation by Legislative Review” included “a map of the ... territory proposed for city

annexation" as required by 3 AAC 110.425(b) when it was available to the public; and

6. Item 22: When filed with the LBC and in further response to the requirements of 3 AAC 110.425(b) as requested during a September 22, 2010, teleconference with Mr. Brent Williams, State of Alaska Department of Commerce Community and Economic Development, the City will provide an affidavit attesting to the fact that the City of Gustavus requested KTOO radio, Juneau, to air a Public Service Announcement providing notice of the May 27, 2010, public hearing regarding the proposed annexation as required by 3 AAC 110.425(e) and 3 AAC 110.425(g); and

WHEREAS, Item 23 from DCCED's September 10, 2010, Technical Review cited the "incomplete summary and the incomplete evidence mentioned in #22, and on the fact that the petition will be revised," advised (but did not require) that another public hearing be held; and

WHEREAS, the City Council's Special Borough Committee, after thorough discussions with the DCCED staff and the Committee's consultant,

1. Determined that the changes to the annexation petition documents, as proposed by the Committee in response to DCCED's Technical Review, are all of a minor nature and in no way change the nature, scope, substance or anticipated impact of the proposed annexation from that provided to the public prior to and at the May 27, 2010, public hearing on this matter; and
2. Determined that the City's proposal to annex certain Falls Creek and Icy Passage territory thus far, despite thorough advertising to all potentially interested parties in Gustavus and elsewhere, has generated absolutely no adverse reaction; and
3. Therefore, unanimously voted to recommend that the City Council not conduct an additional public hearing on the proposed annexation prior to filing this revised petition for annexation with the LBC; and

WHEREAS, the Special Borough Committee has reviewed the entire response to DCCED's September 10, 2010, Technical Review and vouched for its completeness and accuracy; and

WHEREAS, based upon its review of the proposed petition to annex certain Falls Creek and Icy Passage territory, including the Special Borough Committee's proposed revisions to that petition and its supporting Exhibits, the City Council has determined as follows:

1. The territory proposed for annexation exhibits a reasonable need for city government as required by 3 AAC 110.090(a).
2. The City is capable of providing "essential municipal services" more efficiently and more effectively to the territory proposed for annexation than another existing city or organized borough as required by 3 AAC 110.090(b), 3 AAC 110.970(c) and 3 AAC 110.970(d).
3. The territory proposed for annexation is compatible in character with the area inside the current boundaries of the City as required by 3 AAC 110.100.
4. The economy within the proposed expanded boundaries of the City includes the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level as required by 3 AAC 110.110.
5. The population within the proposed expanded boundaries of the City is sufficiently large and stable to support the extension of city government as required by 3 AAC 110.120.
6. The proposed post-annexation boundaries of the City include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level as required by 3 AAC 110.130(a).
7. The territory proposed for annexation is contiguous to the City's present corporate boundaries as presumed by 3 AAC 110.130(b).
8. The proposed post-annexation boundaries of the City include only that area comprising the local community plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation as required by 3 AAC 110.130(c).
9. As required by 3 AAC 110.130(d), the proposed post-annexation boundaries of the City exclude entire geographical regions or large unpopulated areas, except where justified by the application of the city annexation standards in 3 AAC 110.090 - 3 AAC 110.130.
10. The territory proposed for annexation does not overlap the boundaries of any other existing borough or city as required by 3 AAC 110.130(d).
11. The proposed annexation to the City is in the best interests of the state under AS 29.06.040(a) and as required by 3 AAC 110.135.

12. The City's proposal to annex the described territory via the legislative review process is appropriate because it meets the following conditions established, and set forth in 3 AAC 110.140:
- a. The extension of city services or facilities into the territory is necessary to enable the city to provide adequate services to city residents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the boundaries of the city. [3 AAC 110.140(3)]
 - b. Annexation of the territory will enable the city to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the city. [3 AAC 110.140(5)]
 - c. Annexation of the territory will promote maximum local self-government, as determined under 3 AAC 110.981; and will promote a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X, sec. 1, Constitution of the State of Alaska. [3 AAC 110.140(7)]
 - d. Annexation of the territory will enhance the extent to which the existing city meets the standards of incorporation of cities, as set out in the Constitution of the State of Alaska, AS 29.05, and 3 AAC 110.005 – 3 AAC 110.042. [3 AAC 110.140(8)]
 - e. Annexation of the territory by the legislative review process will serve the specific policies set out in the Constitution of the State of Alaska and AS 29.06, and is in the best interests of the state. [3 AAC 110.140(9)]
13. As required by 3 AAC 110.910, the City's proposed annexation will not deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GUSTAVUS, as follows:

Section 1. Adopt Revisions to the Proposed Petition for Annexation Proposed by Special Borough Committee. The City Council of the City of Gustavus hereby accepts, approves and adopts the revisions to the City's proposed petition for annexation of certain Falls Creek and Icy Passage territory proposed by its Special Borough Committee.

Section 2. Decision to not Conduct an Additional Public Hearing. The City Council of the City of Gustavus hereby accepts, approves and adopts the recommendation of the Special Borough Committee to not hold an

additional public hearing on the proposed annexation for the following reasons:

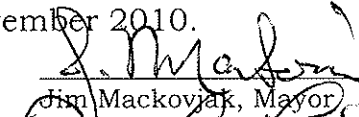
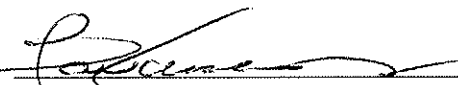
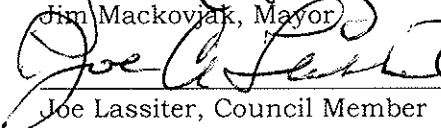
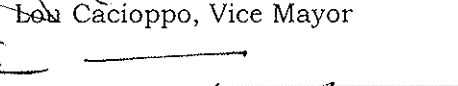
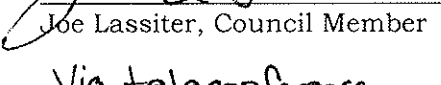

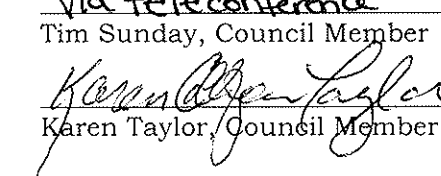
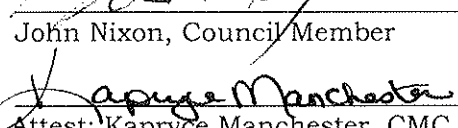
1. The changes to the annexation petition documents, as proposed by the Committee in response to DCCED's Technical Review, are all of a relatively minor nature and in no way change the nature, scope or substance of the proposed annexation from that provided to the public prior to and at the formal May 27, 2010, public hearing conducted under 3 AAC 110.425 on this matter.
2. The City's proposal to annex certain Falls Creek and Icy Passage territory, which the City advertised to all potentially interested parties in Gustavus and elsewhere and provided ample opportunity for public review and comment, has generated absolutely no adverse reaction to date.

Section 3. Authorization to File Petition for Annexation. In accordance with 3 AAC 110.420(b)(20), the Mayor of the City of Gustavus is authorized to file the petition for annexation, as revised, by legislative review with the Alaska Local Boundary Commission. The petition shall propose the annexation of a single contiguous area totaling approximately 16 square miles, which is comprised of approximately 4 square miles of Falls Creek drainage uplands, and approximately 12 square miles of Icy Passage tidelands and submerged lands between present City limits and Pleasant Island.

Section 4. Designation of Petitioner's Representative. The Mayor or the Mayor's designee is designated as the representative of the City for all matters relating to the annexation proceeding.

Section 5. Effective Date. This resolution shall become effective immediately.

PASSED AND ADOPTED by the Gustavus City Council this 28th day of November 2010.

 Jim Mackovjak, Mayor	 Lou Cacioppo, Vice Mayor
 Joe Lassiter, Council Member	 Melanie Lesh, Council Member
 Tim Sunday, Council Member	 John Nixon, Council Member
 Karen Taylor, Council Member	 Attest: Kapryce Manchester, CMC City Clerk